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*Attorneys Plaintiff and Putative Class and Collective Action Members*

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Cody Bowlay-Williams, individually and on  
behalf of others similarly situated,

Plaintiff,

v.

Google, LLC,

Defendant.

**Case No. 4:21-cv-09942-PJH**

**DECLARATION OF MICHELE FISHER**

1           1.     My name is Michele Fisher and I am one of the attorneys for the Class.

2           2.     In March 2022, the parties exchanged initial disclosures, and Plaintiff served  
3 Defendant with discovery requests. Plaintiff also served Defendant a notice of deposition pursuant  
4 to Federal Rule of Civil Procedure 30(b)(6).

5           3.     Defendant produced data for all Class Members reflecting information such as: dates  
6 of employment; hours worked; compensation paid; the issuance, vesting, and value of restricted  
7 stock units; and sign-on bonuses. Defendant also produced information about its restricted stock  
8 option program. Class Counsel used that data to calculate alleged damages for mediation.

9           4.     Class Counsel also researched the novel issues that restricted stock options and sign-  
10 on bonuses presented and provided the mediator with a lengthy memorandum of legislative history  
11 and a detailed legal analysis of their position, which they were prepared to use for a summary  
12 judgment filing. The claims were indeed novel, as Class Counsel has been unable to find case law  
13 directly addressing them.

14          5.     At mediation, Defendant presented its defenses, including that the statute and  
15 legislative history supported the exclusion of restricted stock units from the regular rate of pay, just  
16 as other forms of equity compensation are excluded, or alternatively that Google's restricted stock  
17 unit grants or sign-on bonuses could be excluded as discretionary bonuses. Both sides  
18 acknowledged that no case ever had addressed the issue of whether restricted stock units qualify  
19 for exclusion of the regular rate.

20          6.     While the parties did not settle at mediation, they continued to negotiate with the  
21 assistance of mediator Hunter Hughes to ultimately reach a settlement.

22          7.     According to Defendant's data, there are 6,517 Class Members, 3,274 of whom are  
23 in the California Class.

24          8.     The settlement allocations are based on alleged overtime underpayments calculated  
25 using Defendant's data for each FLSA Collective Member for a two-year statutory period, and  
26 alleged overtime underpayments for California Class Members for a four-year statutory period.  
27 The PAGA eligible California Class Members also received a pro rata share of the \$12,500.00  
28 allotted for PAGA penalties. A minimum allocation of \$50.00 was applied. For those allocated

more than the \$50.00 minimum, Plaintiff estimates their allocation represents approximately 61% of their alleged under-calculated overtime pay for the statutory periods included in the settlement. For those receiving the \$50.00 minimum, they received at least 61% of their alleged under-calculated overtime pay. The average allocation to Class Members is \$954.05 and increases to \$1,440.53 when the \$50.00 minimum allocations are excluded. The \$50,000.00 PAGA allocation is approximately .60% of the maximum settlement amount, with 25% of it allocated to 1,718 eligible California Class Members and the rest to the LWDA.

9. The alleged undercalculated overtime pay for FLSA Collective Members in a two-year statutory period and California Class Members in a four-year statutory period is \$10,083,518.00, exclusive of any liquidated damages and penalties. Plaintiff estimates that including a third year of FLSA damages reserved for willful violations, FLSA liquidated (double damages), and additional potential California penalties, increases Defendant's potential exposure to approximately \$30,071,629.00, as reflected in the chart below:

<b>Potential Alleged Overtime Damages With Penalties and Liquidated Damages</b>	
FLSA Unpaid Overtime (2 Year Statute of Limitations) - RSU	\$ 7,700,677
FLSA Unpaid Overtime (3 Year Statute of Limitations) - RSU	\$ 7,137,604
Add'l CA Unpaid Overtime (4 Year Statute of Limitations) - RSU	\$ 3,852,138
CA Wage Statement Penalty	\$ 722,250
CA Waiting Time Penalty	\$ 7,189,616
FLSA Unpaid Overtime (2 Year Statute of Limitations) - Sign-on Bonus	\$ 305,877
FLSA Unpaid Overtime (3 Year Statute of Limitations) - Sign-on Bonus	\$ 266,297
Add'l CA Unpaid Overtime (4 Year Statute of Limitations)- Sign-on Bonus	\$ 180,670
PAGA Overtime Penalty	\$ 1,300,400
PAGA Wage Statement Penalty	\$ 1,403,200
PAGA Waiting Time Penalty	\$ 12,900
<b>Total Potential Alleged Overtime Damages With Penalties/Liq. Dmgs.</b>	<b>\$ 30,071,629</b>

10. Nichols Kaster, PLLP has been in existence for nearly fifty years and is focused on advocating for employee and consumer rights. Nichols Kaster, PLLP is highly qualified and experienced in litigating wage and hour class actions. The firm's lead counsel, Michele Fisher, is well known for dedicating over 22 years to representing workers in class and collective wage and hour actions across the country.

1           11. This settlement provides fair and reasonable monetary relief for Class Members of a  
2           disputed issue and Class Counsel is not aware of any putative class members who have expressed  
3           an interest in individually pursuing these claims against Defendant. And, Class Counsel is not  
4           aware of any other lawsuits, either individual or as a class, concerning the claims at issue.

5           12. Class Counsel handled this case on a contingency basis. They have not received any  
6           payment for their time, nor have they received reimbursement for litigation costs. Class Counsel  
7           undertook the financial risk of unsuccessful litigation against a large corporate Defendant that can  
8           afford to litigate the issues for an extended period. The fees Class Counsel seeks are even less than  
9           25% if considering that Defendant directly, and separately from this settlement, paid an additional  
10          \$476,868.18 to employees for alleged miscalculated commissions overtime asserted in the  
11          Complaint.

12          13. Plaintiff also alleged individually that Defendant breached its contract with him when  
13          it capped his commissions—a claim which Defendant denied. The parties separately resolved and  
14          dismissed that claim. Plaintiff also initially alleged that Defendant did not incorporate sales  
15          bonuses/commissions into the overtime rate for some employees during two quarters. But Plaintiff  
16          agreed to drop that claim after Defendant demonstrated that stemmed from an inadvertent payroll  
17          error and, in approximately May 2022, it directly paid the 70 employees it identified as impacted  
18          by the issue, and subsequently paid liquidated damages to those same employees in June 2022, for  
19          a total of \$476,868.18 paid.

20          14. Enclosed are true and correct copies of the following:

21          Exhibit 1       Settlement Agreement with Exhibits A-F

22          Exhibit 2       Costs Detail Nichols Kaster, PLLP, and Costs Detail Scalise Law Group, P.C.

23          Exhibit 3       Nichols Kaster, PLLP Firm Resume

24          Exhibit 4       Michele R. Fisher Professional Resume

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
2 and correct to the best of my knowledge.

3  
4 Dated: January 17, 2023

**NICHOLS KASTER, PLLP**

5 By: s/Michele R. Fisher

6 Attorneys for Plaintiff and Putative Class and

7 Collective Action Members  
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